BEFORE THE

FEDERAL COMMUNICATIONS COMMISION

WASHINGTON, D.C. 20554

In the Matter of	)	
Revision of Part 22 of the	)	
Commission's Rules Governing the	)	CC Docket No. 92-115
Public Mobile Services	)	

COMMENTS TO OPPOSITION OF PETITIONS FOR RECONSIDERATION BY CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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COMMENTS ON CTIA'S OPPOSITION TO REQUEST FOR RECONSIDERATION

We are not surprised at the CTIA's opposition to the "request for reconsideration" regarding changes to 22.919. After all, the CTIA is a lobbying group for the carriers, who desire to stifle any competition in the cellular market. The CTIA offers no new insight, information or substantiated documentation regarding it's previous claims. To rehash all the reasons why we disagree with the CTIA would be a waste of time and effort. We will simply say that we totally disagree with the CTIA and believe it's opposition is without merit. Common logic dictates that the revision of Part 22, regarding ESN changes, will have no impact on real cellular fraud. The CTIA is in the business of protecting the cellular carriers, which I might add, are common carriers and should be treated as such. It's claim that cellular fraud, even in part, can be curtailed by eliminating companies performing services similar to C2+ Technology, is without foundation. There is simply no documented evidence to substantiate this claim. Furthermore, we know of no instance where a phone was emulated for a bona-fide customer has been used for fraudulent purposes!

There are, however, several statements made CTIA which we will briefly comment upon. CTIA's assertion that the rule changes to 22.919 "is a critical tool in combating fraud" is without substance. In no way has the CTIA successfully demonstrated how this action will have such an impact. If a registered customer of a cellular telephone request an emulated "extension" phone, and has full knowledge, then how can fraud be perpetuated?

RESPONSE TO CTIA's COMMENTS

SECTION I

In it's Opposition to Petitions for Reconsideration, the CTIA is mistaken in its argument that changes in 22.919 will not cause additional expense or inconvenience to customers. This fact was pointed out by Ericsson and the TIA in their "Request for Reconsideration".

Substantial handling by the cellular agency is required to provide the customer a new "loaner" phone while the original is being repaired. First, the "loaner" phone must be programmed with new NAM information. Second, the new NAM information and ESN must be called to the service center for activation. Activation can take from 15 minutes to several hours before the new telephone is working. This additional handling by the agency takes time and time is money! The customer is inconvenienced because they must wait before leaving with the new "loaner" phone. This is so the agency can assure the phone is working properly before the customer leaves. To do otherwise is to risk an unhappy customer and additional time if a problem with the new activation exist (which is not uncommon). The alternative is to do a simple ESN change and send the customer on their way. This takes less than 15 minutes! Another alternative is changing boards, etc. as suggested by the CTIA. Obviously, the members of the CTIA have little knowledge of how much time is required to perform such maintenance task.

The CTIA asserts that cellular fraud cost the industry $1 million a day in lost revenues. However, it fails to distinguish between what areas of the cellular industry share in this loss. Are we to believe that ALL of this loss is caused solely by ESN changes. It has failed to distinguish between "real" fraud, which is perpetrated by individuals stealing ESNs to deprive the carriers of airtime and toll revenue, and those legitimate companies performing "extension phone" services at a bona-fide customer's request! Unfortunately, the CTIA wishes to lump everyone into the fraud category, including the consumer!

The CTIA states that TIA members need time for a "transitional" period to "permit the orderly design and development of mobile units". We reject this notion. To allow the continued manufacture and distribution of telephones with alterable ESN only serves to exacerbate the present fraud problem. The ONLY way that fraud will ever be dealt a serious blow is through the "hardening" of the ESN making it impossible to alter it. For years the manufacturers have produced ESNs that can be changed, and continue to so today with the approval of the FCC! The manufacturers have had sufficient time to develop their technologies. We strongly urge the FCC to deny this request.

The direct cause of today's cellular fraud is due to the failure of most manufacturers to follow FCC rules regarding ESN design, which have always been a part of 22.919. The failure of the CTIA in policing it's own membership is a contributing cause of the fraud that permeates the cellular industry today. Had the FCC been aggressive in enforcing the manufacturing of ESNs, none of these proceedings would be taking place today! There is no rationale for the continued manufacture of modifiable ESNs when this particular element of the cellular telephone has been targeted as the primary reason for fraud! We fully support the hardening of ESNs and authentication.

SECTION II

The CTIA asserts that it has 8 years of investigating and combating fraud. However, it fails to relate these investigations as to how stopping bona-fide cellular subscribers from having "extension" phones will have any negative impact on cellular fraud. While we strongly support CTIA's effort to eliminate fraud, we simply do not understand the relevance in this issue.

SECTION III

On page 8, paragraph 1, the CTIA states that their Fraud Task Force "has information that C2+ type technology has been used to alter cellular telephones for the purpose of defrauding and has also been used by those engaged in illegal narcotic activity". This is indeed a serious charge.

We are bothered by this statement because it lacks one shred of evidence that substantiates the claim, and furthermore fails to define "C2+ type technology". Is it C2+ Technology or not? Everyone knows that C2+'s technology is unique. Obviously, the CTIA doesn't have a clue! This statement is nothing more than a shameful attempt to smear and discredit C2+ Technologies with the FCC and others that might read these petitions and comments.

There are numerous ways to change the ESN. This ranges from a variety of software packages to simple EPROM "burning". It is impossible to "outlaw" every method to accomplish ESN changes. Therefore, the criminal element will always have a method to perform their illegal activities!

The CTIA continues to fail in recognizing that true fraud will continue because the criminals do not perform their service for bona-fide customers! They perform it for one reason...to steal! No amount of rule changing will curtail this activity. Certainly, if Title 18 has had little impact, a simple rule change by the FCC will have none! Thie only impact this rule change will have is on the consumer and small businesses.

Beginning on page 8, last paragraph and continuing on page 9, first paragraph, the CTIA argues that the carriers can provide "legitimate extension phone service" that provides "superior service and more features than does a cloned phone". This statement is simply untrue! We consider telephones that have been emulated at a bona-fide customer's request as "legitimate". We contend that the customer is paying for the basic service and is entitled to as many phones on the network as desired. The cellular carriers are common carriers and should be held to the same rules and accountability as those providing service on the wired network. There have been no successful arguments as to why this condition should not exist, especially in consideration of recent legislation signed by President Clinton which specifically places the cellular carriers in the same category as the wired network common carriers. This brings up another interesting question. If cellular providers are common carriers, they why are they charging a monthly fee for the "extension" phone in the limited areas where it is offered?

In no instance has the CTIA or any other interested party proved that their oppositions are based upon facts. Actually, the service offered by the carriers is more costly, and not as flexible as an "emulated" phone. In both instances, whether the "extension" service is provided by the carrier or emulation service company, the "extension" phone needs to be kept in the "off" position until ready to use. However, the "extension" phone provided by the carrier is limited to use only in the home area (which does not meet stated FCC compatibility standards), whereas the "emulated" phone can roam and does meet these standards.

The CTIA fails to substantiate why the carrier's service should be considered "superior" or what additional enhancements it offers the public.

SUMMARY

The CTIA fails to present a convincing argument as to why the changes to 22.919 should remain in tact. These changes do not accomplish the task of eliminating fraud. Rather, it simply places a burden upon the general public and diminishes competition within the cellular market. Furthermore, making the rule retroactive places an undue burden upon the public, who bought emulated services in good faith when no rule existed prohibiting ESN changes. It places the bona-fide customer in the position of violating FCC rules through no fault of their own or the company which provided the emulation service. To take this punitive action while ignoring the thousands of phones which have had ESN changes performed by service centers and manufacturers is unequal application of FCC rules! We do not believe that the FCC is acting in the best interest of the public and lacks authority to take such action.

Finally, no evidence has been presented to substantiate any of the claims by the CTIA or it's members. Rather, only opinions and innuendoes have been offered with absolutely no facts presented for the record.

We urge the FCC to reconsider it's position and leave 22.919 in it's original context before the changes. It is sufficient to address the concerns of fraud, if enforced, without stamping out competition.
However, we feel compelled to state that our firm will join the Independent Cellular Services Association with other interested parties to seek another remedy if the rule remains in effect or is applied unequally.